IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINRY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO. 1796 OF 2003

Jitendra C. Vora & Ors. …Petitioners

Versus

Union of India & Anr. …Respondents

Mr. T.G. Vora instructed by Mrs. Neeta Karnik
for the Petitioners

Mr. DA. Dubey with Mr. Girish Kulkarni
for Respondent No. 1

Mr. H.A. Bhojwani for Respondent No. 2.

CORAM: DALVEER BHANDARI, C.J., &
S.J. VAZIFDAR, J.
DATE : JULY 8, 2005.

P.C.

1. Petitioner No. 1 is the sole proprietor of M/s. Voa Bros., and residing at Mumbai. Petitioner Nos. 2,

3 and 4 have stood as guarantors in respect of the credit facilities granted to petitioner No. 1 in respect of the sole proprietary firm of M/s. Vora Bros. Petitioner No. 1 is trading in chemicals and dyes at Mumbai. He obtained financial facilities of hypothecation for the limit of Rs.2,00,000/- and book debt to the extent of Rs.1,00,000/- from the Co-Operative Bank of Ahmedabad Ltd. Petitioner Nos. 1 and 2 have executed the necessary documents and security agreements in favour of respondent No. 2, and petitioner Nos. 1 and 2 have also given collateral security and deposited original title-deeds with an intention to create a charge and security by way of equitable mortgage in favour of respondent No. 2 in respect of the properties belonging to petitioner Nos. 1 and 2, i.e., Flat Nos. 601 and 602 on the 6th Floor of Laxmi Co-operative

Housing Society Limited, situate at M.G. Cross Road No. 4, Kandivali (West), Mumbai 400 067.

2. Petitioner Nos. 1 and 2 have also executed a Memorandum of Equitable Mortgage for Rs.7,00,000/- with interest thereon.

3. The petitioners have failed to repay the amount, and respondent No.2, Co-Operative Bank of Ahmedabad Ltd., issued notice dated 21st May, 2003 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act"). According to the petitioners, Section 13, read with Sections 34, 35, 36 and 37 of the Act are otherwise *ultra vires* the Constitution of India, in so far as it permits issuance of the notice under Section 13(2) of the Act, and as a

consequence thereof, permits action being taken under Sections 13(4)(a), 13(4)(b), 13(4)(c), and 13(4)(d) of the Act.

4. It may be pertinent to mention that the constitutional validity of Section 13(2) and other provisions of the Act has been upheld by the Supreme Court by a judgment in the matter of *Mardia Chemicals v. Union of India* (2004) 4 SCC 311.

5. This petition is fully covered by the said judgment and consequently, this petition, being devoid of any merit, is accordingly dismissed. We leave the parties to bear their own costs.

CHIEF JUSTICE

S.J. VAZIFDAR, J.